

**THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554**

In the Matter of)	
)	
Applications of AT&T Inc. and)	WT Docket No. 11-65
Deutsche Telekom AG)	
)	
For Consent To Assign or Transfer Control of)	
Licenses and Authorizations)	

COMMENTS OF CLEARWIRE CORPORATION

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SUMMARY

Clearwire Corporation, the nation's leading wholesale provider of 4G wireless broadband network services, urges the Commission to subject the instant Application to the most exacting scrutiny, in the overarching national interest of preserving competition and innovation in the U.S. wholesale and retail wireless market. The proposed horizontal merger of T-Mobile USA, the fourth-largest wireless carrier, into AT&T, already the second-largest provider, potentially would remove the largest prospective customer for wholesale wireless broadband network capacity, potentially threatening the ability of wholesale carriers such as Clearwire to disrupt and discipline the market. At the same time it would collapse the retail U.S. wireless marketplace into one dominated by two entities that would collectively control approximately 80 percent of the domestic market for both wireless service and for purchases and distribution of wireless handsets— all to the tremendous detriment of the nation's wireless consumers.

The Commission, in three decades of pro-competitive policy and in the National Broadband Plan, has affirmed its commitment to the preservation and growth of wholesale competition across all sectors of the telecommunications industry. In today's wireless market, wholesale suppliers like Clearwire have promoted a more robust retail market by providing network capacity and spectrum for large and small carriers, both national and regional. These carriers are then able to offer more innovative services at lower prices. The significant new consolidation of the wireless industry proposed in this Application threatens even the most robust and disruptive wholesale business model. Moreover, a combined AT&T/T-Mobile would further reduce competition in the mobile handset market to the detriment of smaller wireless carriers, innovation, and ultimately consumers. The Commission must take extreme care to prevent or remedy the competitive impacts represented by this merger application to ensure the preservation of a competitive and innovative wholesale and retail wireless market for the benefit of all Americans.

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COMMENTS OF CLEARWIRE CORPORATION

Clearwire Corporation (“Clearwire”), pursuant to the Commission’s *Public Notice* (DA 11-799, rel. April 28, 2011), hereby submits its Comments in the above-captioned matter.

I. INTRODUCTION AND STATEMENT OF INTEREST

Clearwire is the nation’s leading provider of 4G wireless broadband network services, providing high-speed mobile Internet and residential access services, as well as residential voice services, in communities throughout the country. It is the leader in WiMAX 4G, currently the leading 4G standard in the world. Clearwire’s 4G network now reaches 130 million people in the U.S. and covers over 70 of the top U.S. markets. Clearwire ended the first quarter of 2011 with approximately 6.15 million total subscribers consisting of 1.29 million retail subscribers and 4.86 million wholesale subscribers. Clearwire currently markets its 4G service through its own brand called CLEAR® as well as through its 4G wholesale relationships with, among others, Sprint Nextel Corporation, Comcast Corporation, Time Warner Cable Inc., Best Buy and Bright House Networks, LLC.

As the leading provider of 4G wireless broadband services serving already highly concentrated national retail and wholesale wireless markets, Clearwire has grave concerns

regarding the dramatically increased concentration that the proposed horizontal merger of T-Mobile USA, the fourth-largest wireless carrier, into AT&T, already the second-largest provider, would bring. By removing T-Mobile, perhaps the largest prospective customer for wholesale wireless broadband network capacity, this deal would potentially decimate the wholesale market and may threaten the ability of wholesale carriers such as Clearwire to disrupt and discipline the market. It would also collapse the retail U.S. wireless marketplace into one dominated by two entities that would collectively control approximately 80 percent of the domestic market for both wireless service and for purchases and distribution of wireless handsets—all to the tremendous detriment of the nation’s wireless consumers.

For over three decades, since its 1976 *Resale and Shared Use Order* and as recently as last week, the Commission has recognized the benefits of a vibrant wholesale market and actively fostered the development and growth of wholesale markets across all telecommunications sectors.¹ In the wireless market, wholesale suppliers like Clearwire have promoted a more robust retail market by providing network capacity and spectrum for large and small carriers, both national and regional. These carriers are then able to offer more innovative services at lower prices. The acquisition proposed by the instant Application would severely impact the market for competitive wholesale wireless service, perhaps removing in a single stroke the largest prospective customer for wholesale wireless broadband network capacity, even as it reduces retail competition and stifles competition and innovation in the market for mobile devices. Unless the Commission and the Department of Justice subject this proposal to the

¹ See generally *Regulatory Policies Concerning Resale and Shared Use of Common Carrier Services and Facilities*, 60 FCC 2d 261 (1976). See also, e.g., Declaratory Ruling in WC Docket No. 10-143, FCC 11-83 (rel. May 26, 2001) ¶ 26 (affirming the interconnection rights of wholesale carriers, stating that “a contrary decision would impede the important development of wholesale telecommunications and facilities-based VoIP competition”); *National Broadband Plan* at 47-48.

closest scrutiny in the interest of preserving competition and innovation in the U.S. wireless market, this merger predictably would tremendously diminish competition in the wholesale wireless market as well as lead to an effective duopoly in both the wireless services and handset markets.²

II. AT&T MISREPRESENTS THE LEVEL OF COMPETITION IN THE WIRELESS MARKETPLACE

In supporting its unlikely claim that “[t]he U.S. wireless marketplace is extremely competitive. . . [and] this transaction will leave the marketplace more dynamic and competitive than before,”³ the instant Application portrays Clearwire as a competitive “triple threat” that will ensure continuing robust competition in a post-merger wireless market. First, it cites Clearwire as a major competitor in the retail market.⁴ Second, it portrays Clearwire as a strong wholesale competitor.⁵ And third, it portrays the Clearwire/Sprint partnership as enabling Sprint to be a strong, spectrum-rich competitor in the market.⁶ Accordingly, the Application triple-counts Clearwire’s status and capabilities for competing and disciplining the retail and wholesale wireless markets in a post-merger environment.

² In this regard, Clearwire is heartened that the Wireless Bureau, in a recent “Information and Discovery Request for AT&T Inc.,” has indicated that it will closely examine the impacts of the proposed merger on competition in the wholesale wireless market. See http://transition.fcc.gov/Daily_Releases/Daily_Business/2011/db0527/DOC-306888A1.pdf and http://transition.fcc.gov/Daily_Releases/Daily_Business/2011/db0527/DOC-306888A2.pdf (May 27, 2011), items 34-35 and 40-41.

³ Application, “Description of Transaction, Public Interest Showing, and Related Demonstrations” (“Public Interest Statement”) at 64.

⁴ *Id.* at 13, 92; Declaration of David Christopher (“Christopher Declaration”) at 46.

⁵ Public Interest Statement at 13, 50-51, 77, n.112, 92, 94, 100; Christopher Declaration at 2, 7, 11, 44-46.

⁶ Public Interest Statement at 26 n.36, 80-81, n.115 (counting Clearwire’s spectrum as Sprint’s), 93; Christopher Declaration at 16, 21-22.

The Application also contains exaggerated portrayals of other wireless providers by citing small, regional carriers such as Metro PCS, Cell South and Leap as capable of providing market discipline on a nationwide level. It asserts that MetroPCS, Leap and others can “fill any gap T-Mobile USA might leave in the competition for value-conscious consumers when the transaction is complete.”⁷ While T-Mobile has nationwide coverage, Metro PCS 4G service is only available in 14 markets today. Leap does not have a commercial 4G trial until late 2011, and U.S. Cellular announced its 4G rollout in a small number of markets to be in place at the end of 2011. Smaller carriers like Cellular South and Cincinnati Bell only operate in a select number of markets, have fewer subscribers, and cannot compete on the national level. LightSquared must resolve its GPS interference issues before entering the market as a wholesale provider. Thus, the carriers that are portrayed in the Application as ready to fill the gap in the market do not offer the same level of services or operate in as many markets as T-Mobile, leaving consumers to decide between higher costs or higher speeds.

To be accurate, Clearwire is an independent company with operations and customers entirely separate from Sprint and which in the last year has increasingly distinguished itself as a wholesale provider.⁸ Indeed, it is Clearwire’s leading position in the wholesale wireless market that is both the core of its business model and the primary source of its grave concern over the proposed merger, which will remove yet another -- and indeed the largest and most significant -- prospective customer of wholesale wireless network capacity. While AT&T seeks to assuage the

⁷ Public Interest Statement at 83.

⁸ See Press Release, “Clearwire Reports Record First Quarter 2011 Results,” May 4, 2011 (reporting “company-best wholesale revenue growth,” that its “subscriber base consists of 1.29 million retail subscribers and 4.86 million wholesale subscribers,” and that the company expects to “end 2011 with approximately 9.5 million subscribers, with most of those subscribers coming from the wholesale business”), *available at* <http://corporate.clearwire.com/releasedetail.cfm?ReleaseID=574512>. The Application elsewhere indirectly concedes Clearwire’s limited position as a competitor to AT&T in the retail market. See *e.g.* Public Interest Statement at 82 n.119.

Commission's pro-competitive concerns by proclaiming, *inter alia*, that "[t]he wholesale business model that Clearwire introduced over the last two years . . . has the potential to change the wireless industry,"⁹ its executives elsewhere discount entirely the market opportunity for wholesale wireless providers. Indeed, AT&T has claimed that there is not room for two wholesale broadband wireless carriers and perhaps not even for *one* wholesaler, recently proclaiming that "there really isn't a profitable wholesale model in wireless today" and that "there would be further benefit to additional consolidation in the wireless marketplace."¹⁰ What AT&T fails to acknowledge is that it is the very fact of continuing consolidation in the wireless industry that threatens even the most robust and disruptive wholesale business model. Clearwire fears that AT&T will be able to render its dismissal of the threat of wholesale competition a self-fulfilling prophecy unless the Commission remedies the competitive impacts represented by the merger application to ensure a robust wholesale market.

While the Application repeatedly dismisses T-Mobile's contribution to a competitive wireless marketplace as an independent carrier, it neglects to observe that T-Mobile -- the fourth largest retail wireless provider and the leading price-disciplining competitor in the consumer market¹¹ -- is one of the preeminent remaining prospective customers for wholesale capacity. In particular, an independent T-Mobile has been widely perceived as the most logical customer for wholesale 4G network capacity.¹² Thus, the proposed merger threatens in a single stroke to both remove the strongest retail price competitor in the marketplace and further contract the shrinking

⁹ Christopher Declaration at 44. *See also* Public Interest Statement at 94.

¹⁰ Reuters, "AT&T: No Room for Both Clearwire, LightSquared," May 13, 2011, available at <http://www.reuters.com/article/2011/05/13/us-summit-att-idUSTRE74C6F220110513>. *See also* "AT&T's Stankey Trash Talks Clearwire, LightSquared," May 16, 2011, available at <http://www.dslreports.com/shownews/ATTs-Stankey-Trash-Talks-Clearwire-LightSquared-114242?nocomment=1>.

¹¹ *See* Christopher Declaration. at 19.

¹² *See, e.g.,* <http://www.businessweek.com/news/2010-12-02/sprint-pushed-for-deal-between-clearwire-t-mobile.html>

addressable market for wholesale providers like Clearwire, in derogation of the Commission's wholesale competition policies. As the *National Broadband Plan* states:

Ensuring robust competition not only for American households but also for American business requires particular attention to the role of wholesale markets, through which providers of broadband services secure critical inputs from one another. Because of the economies of scale, scope and density that characterize telecommunications networks, well functioning wholesale markets can help foster retail competition, as it is not economically or practically feasible for competitors to build facilities in all geographic areas. Therefore, the nation's regulatory policies for wholesale access affect the competitiveness of markets for retail broadband services provided to small businesses, mobile customers and enterprise customers.¹³

Indeed, it is the very fact of the rapidly increasing consolidation of the retail wireless market,¹⁴ which would reach its apex with the proposed acquisition (until the next merger, which might be all but assured by the Commission's approval of this one), that has brought about the diminution of market opportunities for a wholesale business model. Simply stated, the proposed transaction could remove yet another potential wholesale partner from the marketplace and make it even easier for a combined AT&T/T-Mobile to prevent meaningful competition by wholesale players. That is why it is imperative that the Commission either determine that the damage to the wholesale market represented by further consolidation is too great to be tolerated, or address it head-on with conditions that require the merged entity to be an ongoing, meaningful customer in the wholesale marketplace.

¹³ *National Broadband Plan* at 47.

¹⁴ See Government Accountability Office, *Enhanced Data Collection Could Help FCC Better Monitor Competition In The Wireless Industry*, Report To Congressional Requesters, GAO-10-779 (July 2010) ("GAO Report") at 10 ("The primary change in the wireless industry since 2000 has been the consolidation of wireless carriers"). See also, 14th Annual Report on Mobile Wireless Competition, FCC 10-81 (rel. May 20, 2010) ("2010 Wireless Competition Report") (declining, for the first time, to find that effective competition exists in the wireless market). See also *id.* at ¶ 79 (noting, among others, the mergers of Sprint and Nextel, Verizon Wireless and Alltel, and AT&T and Centennial within the past five years). AT&T's present wireless entity itself is the result of a massive consolidation—the acquisition of an earlier AT&T Wireless by Cingular (the joint venture of SBC and BellSouth), which was followed by SBC's acquisition of BellSouth and then of AT&T itself. See *GAO Report* at 11-12.

III. THE PROPOSED MERGER WOULD RESULT IN AN EVEN MORE HIGHLY CONCENTRATED NATIONAL WIRELESS MARKET AND WARRANTS CLOSE SCRUTINY FROM THE COMMISSION

It is obvious that a merger of the second and fourth largest service providers in a market dominated by four providers will have a profound – and largely adverse – impact on the overall level of competition in the wireless industry, to the detriment of U.S. consumers. This common sense observation is vividly borne out in a variety of metrics prepared by an independent financial analysis firm.¹⁵ Based on recent publicly-available data, AT&T held a 27.8% revenue market share of the wireless market and T-Mobile held 12.1%. If the proposed merger is consummated, AT&T would then hold a 39.9% revenue market share, creating an effective duopoly with Verizon, with its 36.5% market share. AT&T and Verizon would have a collective market share of ***nearly 80%***, leaving only Sprint as the other wireless carrier with any significant revenue market share, at 16.6%.

Beyond market share analysis, other evidence of the dramatic increase in market concentration is seen in the Herfindahl-Hirschman Index (“HHI”) of market concentration. HHI analysis is a staple of the DOJ’s and FTC’s consideration of the impact of horizontal mergers, and the Commission routinely considers this important metric as part of its overall merger review process.¹⁶ As shown in Table 1, the proposed elimination of T-Mobile as a competitor would dramatically increase the level of concentration in the wireless market.

¹⁵ Stifel Nicolaus, Washington Telecom, Media, and Tech Insider, *AT&T / T-Mobile Merge* (March 28, 2011) at 4 (“Stifel Nicolaus Report”).

¹⁶ See, e.g., *Applications of Cellco Partnership d/b/a Verizon Wireless and AT&T, Inc.*, Memorandum Opinion and Order and Declaratory Ruling, 25 FCC Rcd. 10985 at ¶ 29 (2010); *Applications of AT&T Inc. and Cellco Partnership d/b/a Verizon Wireless*, Memorandum Opinion and Order, 25 FCC Rcd. 8704 at ¶ 32 (2010); and *Applications of AT&T Inc. and Centennial Communications Corp.*, Memorandum Opinion and Order, 24 FCC Rcd. 13915 at ¶ 46 (2009).

Table 1¹⁷ Percentage of Total Revenue, 4th Quarter 2008				
Company	Market Share - Current	HHI - Current	Market Share After Merger	HHI After Merger
Verizon	36.5%	1,332	36.5%	1,332
AT&T	27.8%	773	39.9%	1,592
Sprint	16.6%	276	16.6%	276
T-Mobile	12.1%	146	- 0 -	- 0 -
Others (Metro PCS, US Cellular, Leap and others)	7.0%	10	7.0%	10
Total	100.0%	2,537	100.0%	3,210
Change in HHI				Increase of 673

At the current HHI level of 2,537, the U.S. wireless market is already deemed to be “highly concentrated” (HHI above 2,500) by the classification scheme set forth in the Horizontal Merger Guidelines established by the DOJ and FTC.¹⁸ Should T-Mobile exit the market as a result of the proposed merger, the U.S. wireless market would become significantly more “highly concentrated,” with an HHI of 3,210 – far above the threshold level of 2,500 for highly concentrated status. The FTC/DOJ Horizontal Merger Guidelines state that “[m]ergers resulting in highly concentrated markets that involve an increase in the HHI of more than 200 points will be presumed to be likely to enhance market power.”¹⁹ In previous transactions, the Commission has given additional competitive scrutiny to situations in which the post-transaction HHI would be greater than 2,800 and the change in HHI greater than 100 or the HHI increase 250 or greater, regardless of the HHI level.²⁰ Here, the proposed merger would result in an *even more highly concentrated market* and an increase in the HHI of **673 points**. Unquestionably, the proposed

¹⁷ Stifel Nicolaus Report at 4.

¹⁸ United States Department of Justice and Federal Trade Commission, Horizontal Merger Guidelines at 19 (Aug. 19, 2010) available at <http://www.justice.gov/atr/public/guidelines/hmg-2010.html>.

¹⁹ Merger Guidelines at 19.

²⁰ See *supra* note 16.

merger would enhance market power for the surviving duopoly of AT&T and Verizon, and thus warrants very close scrutiny by the Commission.

The anticompetitive impact of the proposed merger is even more pronounced when viewed on a per subscriber and market-by-market basis. Of the top 50 economic areas in the United States, over two-thirds (34) of these local markets would be “highly concentrated” (HHI above 2,500) after the proposed merger, including New York City (2,640), Washington-Baltimore (2,731), San Francisco (2,610), Dallas-Ft. Worth (2,623), Boston (2,800), Detroit (2,971), Philadelphia (2,614) and Cleveland (3,773).²¹ The impact is generally even greater in smaller markets such as Indianapolis (3,033), Pittsburgh (3,157), Columbus (3,080), Charlotte (3,059), Little Rock (4,210), Syracuse (4,002) and Oklahoma City (3,444). Clearwire respectfully submits that the closest scrutiny is warranted for local markets where extraordinarily high market concentration levels would result.

IV. THE MARKET FOR WIRELESS DEVICES SHOULD BE CAREFULLY SCRUTINIZED

AT&T’s acquisition of T-Mobile also threatens to further reduce handset availability and interoperability in the United States. Handset manufacturers are dependent on wireless carriers to access their customers.²² Combined, the new AT&T/T-Mobile entity and Verizon would control nearly 80% of the market. As a result, handset manufacturers will be less able or willing to partner with anyone other than these duopolists as access to these two providers’ customer

²¹ Stifel Nicolaus Report at 6.

²² In the U.S., analysts estimate that 90 to 95% of handsets are sold by the wireless carriers, whereas in some Asian markets approximately 80% are sold independently from the carrier. Marguerite Reardon, “Will ‘unlocked cell phones’ free consumers?” CNET News.com, January 24, 2007, available at http://news.com.com/Will+unlocked+cell+phones+free+consumers/2100-1039_3-6152735.html?tag=st.prev.

bases will be at once essential and sufficient. Recent history has proven that it is difficult for smaller carriers to procure handset components when the largest firms in the industry have locked up production for their own devices with exclusive deals.²³

WiMAX remains the leading 4G standard in the world today. However, by adopting the 4G LTE standard, AT&T together with Verizon Wireless, through their combined size and leverage over the handset market, helped to muscle WiMAX out of the picture in the United States. Just as Clearwire announced a large expansion of its WiMAX 4G network, representatives from AT&T and Verizon Wireless announced plans to launch services using the competing LTE standard for 4G.²⁴ Shortly thereafter, in what appeared to be a response to coordinated pressure from LTE advocates, vendors announced plans to stop producing WiMAX-compatible handsets and start producing LTE phones. Indeed, Motorola and Alcatel-Lucent, which were originally identified as among the top vendors in the WiMAX mobile equipment market, shelved WiMAX device development once they began bidding for the Verizon LTE business.²⁵ Innovative development of WiMAX capable handsets was then relegated to smaller

²³ Launched in June 2010, Sprint's EVO 4G handset powered by Android 2.1 was the nation's first 4G enabled handset. But shortages of the handset components limited potential sales, while rival carriers AT&T and Verizon Wireless were able to move closer to launching their own 4G networks. HTC Corp., the Taiwanese company that developed the EVO for Sprint, was unable able to keep up with demand. HTC had been plagued by shortages of the EVO since shortly after it launched the Droid Incredible on Verizon Wireless in late April of the same year. See Niraj Sheeth, "Shortages of Phone Hindering Sprint 4G," Wall Street Journal (July 11, 2010), *available at* <http://online.wsj.com/article/SB10001424052748704258604575360861869918170.html>

²⁴ At an investor conference on Wednesday, May 25, 2011, John Stankey, head of AT&T's business-solutions unit, announced plans to launch the company's LTE network in Atlanta, Chicago, Dallas, Houston and San Antonio this summer, and added that he expects to rollout 4G LTE to ten additional markets by the end of the year. Roger Cheng, "New AT&T Network to Launch," The Wall Street Journal, May 26, 2011, *available at* <http://online.wsj.com/article/SB10001424052702304066504576345222659227628.html>

²⁵ Alain Baritault, "Alcatel-Lucent refocuses WiMAX business to support LTE," MuniWireless, Feb. 8, 2009 (Philippe Keryer, Executive VP and President of the Carrier Products group explained that the company's decision to focus on LTE instead of WiMAX was based on the fact that its "major mobile customers have made the choice of LTE."), *available at* <http://www.muniwireless.com/2009/02/08/alcatel-lucent-supports-lte/>

players in the handset market. Meanwhile, AT&T's buildout of 4G LTE has been sluggish, having only announced the *future* launch to its first five cities one week ago.²⁶

AT&T is a firm with a history of stifling handset innovation and has stymied the development of free applications. As reported by the Wall Street Journal,²⁷ handset manufacturers have sought to offer consumers free services on new handsets, but network operators, including AT&T, have said “no” to those free services because they compete with services for which the wireless carrier wants to charge. According to the article, RIM had sought to offer a free mapping service to customers who buy the Blackberry, but AT&T refused to allow it, because AT&T had a service for which it wanted to charge users \$10 per month.

AT&T has shown no interest in innovating to allow multi-mode handsets that would work on both the LTE and WiMAX networks. While it has been technically feasible to have phones that operate on all flavors of mobile networks for some time, U.S. carriers – including AT&T – have resisted this vehemently. At last year's CTIA convention, Glenn Lurie, AT&T's president of emerging devices, stated that WiMAX was not in the mix of the wireless devices it intended to support. “At AT&T, it's all about Wi-Fi. We're not supporting WiMAX,” he said.²⁸ At the same time, Verizon said that interoperability was “not something we are looking at.”²⁹ AT&T has taken this position even though it makes sense for AT&T and other LTE carriers to interoperate with WiMAX, and they could do so using a dual chipset in devices that will work on

²⁶ Paul Kapustka, AT&T LTE: Fooling Some of the People, Some of the Time, MuniWireless, May 25, 2011, available at <http://www.muniwireless.com/2011/05/25/att-lte-fooling-some-of-the-people-some-of-the-time/>

²⁷ Jessica Vascellaro, “Air War: A Fight Over What You Can Do on a Cell Phone – Handset Makers Push Free Features for Which the Carriers Want to Charge.” Wall Street Journal (June 14, 2007).

²⁸ Matt Hamblen, “Game on: WiMAX will battle LTE in the trenches.” Computerworld, Mar. 24, 2010, available at http://www.computerworld.com/s/article/9174067/Game_on_WiMax_will_battle_LTE_in_the_trenches

²⁹ *Id.*

both standards at a low marginal price. “What’s it going to cost to add WiMAX capability to a phone? Maybe \$10?” according to ABI analyst Kevin Burden.³⁰

In addition, AT&T sought to prevent enhanced wireless DSL, which is a platform solution for wireless broadband using WiMAX where LTE is not possible, especially for rural or less populated areas, until its adoption became inevitable.³¹ Similarly, despite significant consumer demand, AT&T kept Skype and Google Voice off the platform for a very long time, until the company was compelled by regulators to carry these popular services, or face an investigation into their competitive practices.³²

In its Public Interest Statement, AT&T claims that small wireless carriers can look to Clearwire and LightSquared to leapfrog the two largest players and deploy a new generation of service over a new generation of handsets.³³ While this might be possible in a robustly competitive market, the proposed merger makes this scenario far less likely.

AT&T demonstrated its ability to leverage its power over equipment manufacturers after it won significant spectrum in the 700 MHz auction. Reportedly at the behest of AT&T, as the holder of only Lower 700 MHz Band Block B and C licenses, a “Band Class 17” was created to allow LTE equipment covering only Blocks B and C in the Lower 700 MHz band.³⁴ This is in

³⁰ *Id*

³¹ Karl Bode, “AT&T Offers New 3G/DSL Bundle, Broadband DSL Reports.com,” Apr. 1, 2009, *available at* <http://www.dslreports.com/shownews/ATT-Offers-New-3GDSL-Bundle-101664>

³² Ryan Singel, “AT&T Relents, Opens iPhone to Skype, VoIP.” *Wired*, Oct. 6, 2009; July 31, 2009 Letter to AT&T Services, Inc. regarding Apple’s Rejection of the Google Voice for iPhone Application from James D. Schlichting, Acting Chief, Wireless Telecommunications Bureau, FCC. Julius Genachowski, Chairman, FCC, Preserving a Free and Open Internet: A Platform for Innovation, Opportunity, and Prosperity, Remarks at The Brookings Institution (Sept. 21, 2009), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-293568A1.pdf.

³³ Public Interest Statement at 51.

³⁴ See Public Notice, *Wireless Telecommunications Bureau Seeks Comment on Petition for Rulemaking Regarding 700 MHz Band Mobile Equipment Design and Procurement Practices*, RM No. 11592 (Feb. 18, 2010); Petition for Rulemaking Regarding the Need for 700 MHz Mobile Equipment to be Capable of Operating on All Paired Commercial 700 MHz Frequency Blocks, filed Sept. 29, 2009.

stark contrast to Band 12 which calls for equipment capable of operation on all paired commercial 700 MHz frequencies. The creation of a band that excluded Block A virtually assured that equipment needed by smaller carriers that acquired Lower Band 700 MHz Block A would only be available later in time and at considerably higher prices. While AT&T justified its decision to separate band class 17 from band class 12 devices as necessary to avoid harmful interference, other solutions were available to prevent harmful interference. The competitive issues lurking beneath this decision simply cannot be ignored.

In sum, the bulk purchasing power of a combined AT&T/T-Mobile will further reduce competition in the mobile equipment market to the detriment of smaller wireless carriers, innovation, and ultimately consumers. Again, the Commission needs to determine whether this threat to competition, when considered with all the other detrimental impacts of the proposed merger, is too great to tolerate, or it must impose conditions to ensure that the evolution of the device market to accommodate interoperable multi-mode, multi-band devices is guaranteed.

V. THE PROPOSED TRANSACTION WOULD REMOVE AN IMPORTANT, INNOVATIVE, PRICE-DISCIPLINING RETAIL COMPETITOR AND WHOLESALE CUSTOMER

One need only be an American who occasionally watches television to know that T-Mobile is the upstart “maverick” of the U.S. retail wireless marketplace, with the lowest priced consumer rate plans, the most imaginative branding and marketing, and with broad appeal to families and particularly to younger adults. The Commission’s most recent Wireless Competition Report testifies to T-Mobile’s current leadership in disciplining retail wireless prices — especially that of AT&T and the other giant carrier, Verizon Wireless:

Even before T-Mobile launched its new pricing plans, Verizon Wireless and AT&T priced their postpaid service offerings at a premium relative to those of T-Mobile and Sprint Nextel. . . . T-Mobile’s price changes appear to have

prompted Verizon Wireless and AT&T to narrow the price premium on unlimited service offerings. In January 2010, Verizon Wireless reduced the prices of its unlimited voice plans for both individual and shared family offerings. Later the same day, AT&T responded to Verizon Wireless's changes with matching price reductions on its unlimited voice plans. While Verizon Wireless's and AT&T's unlimited plan price cuts were significant, their postpaid service offerings remained the most expensive in the industry, even following these price changes Verizon Wireless and AT&T shared a virtually identical tiered pricing structure before and after these pricing changes. . . .³⁵

More specifically, a recent *Consumer Reports* survey reveals that T-Mobile customers typically pay between \$15 and \$50 less per month for their wireless service than they would under comparable AT&T rate plans,³⁶ and its customer service and satisfaction are regularly rated far higher than AT&T's. Indeed, according to another recent *Consumer Reports* survey, AT&T is the lowest-scoring wireless carrier in the U.S., and of all the providers rated, AT&T was the only one to drop significantly in overall satisfaction.³⁷ Despite AT&T's assurances that *pre-existing* T-Mobile subscribers will continue to enjoy their lower-priced service plans for a limited interval (but not "indefinitely"), AT&T is conspicuously silent when it comes to new subscribers or the longer term, and predictably will force former T-Mobile subscribers off their "legacy" plans and onto the higher-priced AT&T plans when the slightest change is ordered.³⁸

T-Mobile has also been a key innovator in the retail wireless market. It was the first U.S. network to support the extremely popular Android smartphone, it has been a pioneer and market

³⁵ 2010 Wireless Competition Report at ¶¶ 92-93.

³⁶ Consumer Reports, "CR Analysis: T-Mobile *is* cheaper than AT&T," April 8, 2011, available at <http://news.consumerreports.org/electronics/2011/04/cr-analysis-t-mobile-is-cheaper-thanatt.html>.

³⁷ Consumer Reports, "Cell-Service Ratings: AT&T is the Worst Carrier," Dec. 6, 2010, available at <http://news.consumerreports.org/electronics/2010/12/consumer-reports-cell-phone-survey-att-worst.html>.

³⁸ See Washington Post, "AT&T, 'T-Mobile file Merger Application: Q&A with James Cicconi," April 11, 2011, available at http://www.washingtonpost.com/blogs/post-tech/post/atandt-tmobile-file-merger-application-qanda-with-james-cicconi/2011/04/11/AFhzCTQD_blog.html.

leader in unlimited minutes and text messaging plans and deeply discounted family plans, and its predecessor, VoiceStream, was the first to offer two-way text messaging.³⁹

Finally—and of critical importance to the prospects for a robust wholesale market in the wireless sector-- as discussed earlier, T-Mobile also has been the most likely significant customer for wholesale wireless broadband network capacity.⁴⁰ With the proposed acquisition of T-Mobile, however, the addressable wholesale market will potentially be materially impacted as AT&T, eliminates yet another large former retail competitor.

In sum, it is imperative to the future of competition and innovation in the wholesale and retail U.S. wireless marketplace, and indeed to the survival of the consumer and enterprise benefits that competition and innovation have forged in that marketplace since the advent of the Commission's pro-competitive, pro-entry wireless policies of the 1990s, that the Commission as well as the Department of Justice pursue an intensive and complete investigation into this proposed merger.

VI. CONCLUSION

In light of the foregoing, Clearwire urges the Commission, in its consideration of the instant Application, to ensure above all that its decisions are faithful to the paramount public policy objectives of the preservation and growth of a robust and flourishing competitive marketplace in the wholesale and retail U.S. wireless telecommunications services sector. The nation, and its hundreds of millions of consumers and businesses who will be impacted

³⁹ See *2010 Wireless Competition Report*, *supra*; *Thirteenth Report* (WT Docket No. 08-27), FCC 09-54 (rel. Jan. 16, 2009) at ¶ 112.

⁴⁰ See *supra* note 12.

significantly by the Commission's decision in this matter, deserve no less.

Respectfully submitted,

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/S/

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